



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

ALSTON & BIRD LLP  
BANK OF AMERICA PLAZA  
101 SOUTH TRYON STREET, SUITE 4000  
CHARLOTTE NC 28280-4000

**COPY MAILED** Paper No.  
SEP 15 2009  
**OFFICE OF PETITIONS**

In re Application of :  
Abad et al. :  
Application No. 10/032,717 : LETTER REGARDING  
Filed: October 23, 2001 : PATENT TERM ADJUSTMENT  
Attorney Docket No. 035718/237005 :  
Title: GENES ENCODING NOVEL :  
BACILLUS THURINGIENSIS PROTEINS :  
WITH PESTICIDAL ACTIVITY AGAINST :  
COLEOPTERANS :

This is a decision on the "LETTER OF GOOD FAITH AND CANDOR REGARDING PATENT TERM ADJUSTMENT," filed June 2, 2009. Applicants request that the patent term adjustment indicated on the initial determination of patent term adjustment be corrected from seven hundred and forty-three (743) days to six hundred and fifty-eight (658) days.

The request for reconsideration of the patent term adjustment is GRANTED TO THE EXTENT INDICATED HEREIN.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is 658 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

A review of the application history supports a conclusion that Applicants are correct in stating that the entry of 85 days of examination delay associated with the mailing of an examiner's

answer on March 6, 2007 was improper, but not for the reason stated by Applicant. A discussion follows.

37 C.F.R. § 1.703(a)(4) states that the failure to mail an examiner's answer within four months of the receipt of an appeal brief that is in compliance with 37 C.F.R. § 41.37 constitutes a delay on the part of the Office.

On August 11, 2006, a notice of appeal was filed, and an appeal brief was subsequently filed on October 10, 2006. This appeal brief was found to be defective, and a notification of non-compliant appeal brief was mailed on October 19, 2006. A second appeal brief was filed on November 17, 2006, and an examiner's answer was mailed within four months March 6, 2007.

The Office improperly entered 85 days of Office delay for failing to mail an examiner's answer within four months of the filing of the notice of appeal on August 11, 2006.

The other periods of Office and Applicant delay are not at issue.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 658 (687 days of Office delay minus 29 days of Applicant delay) days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 fee under 37 C.F.R. § 1.18(e). The Office thanks Applicants for their good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanowski at (571) 272-3225.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" and last name "Johnson" clearly distinguishable.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of REVISED PALM Screen

Day : Monday  
Date: 9/14/2009

# PALM INTRANET

Time: 17:57:17

## PTA Calculations for Application: 10/032717

Application Filing Date:	10/23/2001	PTO Delay (PTO):	772
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	29
Post-Issue Petitions:	0	Total PTA (days):	658
PTO Delay Adjustment:	-85		

## File Contents History

Number	Date	Contents Description	PTO	APPL	START
136	09/14/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		85	
127	05/12/2009	MAIL NOTICE OF ALLOWANCE			
126	05/11/2009	ISSUE REVISION COMPLETED			
125	05/11/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
124	05/11/2009	DOCUMENT VERIFICATION			
123	05/08/2009	EXAMINER'S AMENDMENT COMMUNICATION			
122	05/08/2009	NOTICE OF ALLOWABILITY			
117	04/24/2009	NOTICE OF APPEAL FILED			
116	04/24/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
115	03/09/2009	DATE FORWARDED TO EXAMINER			
114	02/19/2009	SUPPLEMENTAL RESPONSE		29	104
113	02/19/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
109	02/09/2009	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
108	02/05/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
107	01/29/2009	MAIL ADVISORY ACTION (PTOL - 303)			
106	01/28/2009	ADVISORY ACTION (PTOL-303)			
105	01/24/2009	DATE FORWARDED TO EXAMINER			
104	01/21/2009	AMENDMENT AFTER FINAL REJECTION			
103	10/24/2008	MAIL FINAL REJECTION (PTOL - 326)			
102	10/23/2008	FINAL REJECTION			
101	08/12/2008	DATE FORWARDED TO EXAMINER			
100	07/11/2008	RESPONSE AFTER NON-FINAL ACTION			

99	04/17/2008	MAIL NON-FINAL REJECTION			
98	04/14/2008	REQUIREMENT UNDER RULE 105 INCLUDED WITH OFFICE ACTION			
97	04/14/2008	NON-FINAL REJECTION			
96	04/07/2008	MAIL BOA MISCELLANEOUS COMMUNICATION TO APPLICANT			
95	04/04/2008	BOA MISCELLANEOUS COMMUNICATION TO APPLICANT			
94	04/03/2008	MAIL BPAI DECISION ON APPEAL - REVERSED	602		68
93	04/03/2008	BPAI DECISION - EXAMINER REVERSED			
90	02/07/2008	CONFIRMATION OF HEARING BY APPELLANT			
89	02/06/2008	NOTIFICATION OF APPEAL HEARING			
88	09/06/2007	DOCKETING NOTICE MAILED TO APPELLANT			
87	09/06/2007	ASSIGNMENT OF APPEAL NUMBER			
86	08/23/2007	APPEAL AWAITING BPAI DOCKETING			
85	07/12/2007	MAIL REPLY BRIEF NOTED BY EXAMINER			
84	07/06/2007	REPLY BRIEF NOTED BY EXAMINER			
83	05/03/2007	EXAM. ANS. REVIEW COMPLETE			
82	05/02/2007	REQUEST FOR ORAL HEARING			
81	05/03/2007	DATE FORWARDED TO EXAMINER			
80	05/02/2007	REPLY BRIEF FILED			
79	03/27/2007	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
78	03/25/2007	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
77	03/06/2007	MAIL EXAMINER'S ANSWER	85		66
76	03/03/2007	EXAMINER'S ANSWER TO APPEAL BRIEF			
75	12/27/2006	APPEAL BRIEF REVIEW COMPLETE			
74	12/27/2006	DATE FORWARDED TO EXAMINER			
73	11/17/2006	APPEAL BRIEF FILED			
72	10/19/2006	NOTICE -- DEFECTIVE APPEAL BRIEF			
71	10/17/2006	APPEAL BRIEF REVIEW COMPLETE			
70	10/16/2006	DATE FORWARDED TO EXAMINER			
69.1	10/10/2006	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
69	10/10/2006	APPEAL BRIEF FILED			
68	08/11/2006	NOTICE OF APPEAL FILED			
67	08/16/2006	DATE FORWARDED TO EXAMINER			
66	08/11/2006	RESPONSE AFTER NON-FINAL ACTION			

65	06/09/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
64	05/18/2006	MAIL NON-FINAL REJECTION			
63	05/15/2006	NON-FINAL REJECTION			
62	05/15/2006	MAIL NOTICE OF WITHDRAWN ACTION			
61	05/15/2006	LETTER WITHDRAWING / VACATING OFFICE ACTION			
60	02/23/2006	REQUEST FOR ORAL HEARING			
59	02/27/2006	DATE FORWARDED TO EXAMINER			
58	02/23/2006	REPLY BRIEF FILED			
57	12/23/2005	MAIL EXAMINER'S ANSWER			
56	12/12/2005	EXAMINER'S ANSWER TO APPEAL BRIEF			
55	10/08/2005	DATE FORWARDED TO EXAMINER			
54	10/04/2005	APPEAL BRIEF FILED			
53	10/08/2005	DATE FORWARDED TO EXAMINER			
52	10/04/2005	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
51	07/06/2005	NOTICE OF APPEAL FILED			
50	05/06/2005	MAIL FINAL REJECTION (PTOL - 326)			
49	04/18/2005	FINAL REJECTION			
48	02/14/2005	DATE FORWARDED TO EXAMINER			
47	01/21/2005	RESPONSE AFTER NON-FINAL ACTION			
46	01/21/2005	WORKFLOW INCOMING AMENDMENT IFW			
45	10/21/2004	MAIL NON-FINAL REJECTION	20		36
44	10/18/2004	NON-FINAL REJECTION			
43	08/02/2004	DATE FORWARDED TO EXAMINER			
42	07/27/2004	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
41	08/02/2004	DATE FORWARDED TO EXAMINER			
40	07/27/2004	APPEAL BRIEF FILED			
39	07/27/2004	WORKFLOW INCOMING AMENDMENT IFW			
38	06/28/2004	NOTICE -- DEFECTIVE APPEAL BRIEF			
37	06/08/2004	DATE FORWARDED TO EXAMINER			
36.1	06/01/2004	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
36	06/01/2004	APPEAL BRIEF FILED			
35	06/08/2004	DATE FORWARDED TO EXAMINER			
34	06/01/2004	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			

33	06/01/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
32	06/01/2004	WORKFLOW INCOMING AMENDMENT IFW			
31	06/01/2004	WORKFLOW INCOMING PETITION IFW			
30	03/01/2004	NOTICE OF APPEAL FILED			
29	02/18/2004	MAIL ADVISORY ACTION (PTOL - 303)			
28	02/14/2004	ADVISORY ACTION (PTOL-303)			
27	02/09/2004	DATE FORWARDED TO EXAMINER			
26	02/02/2004	AMENDMENT AFTER FINAL REJECTION			
25	02/09/2004	REFERENCE CAPTURE ON IDS			
24.7	02/02/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
24	02/02/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
23	12/03/2003	MAIL FINAL REJECTION (PTOL - 326)	65		20
22	12/01/2003	FINAL REJECTION			
21	09/28/2003	DATE FORWARDED TO EXAMINER			
20	05/29/2003	RESPONSE AFTER NON-FINAL ACTION			
19	03/12/2003	MAIL NON-FINAL REJECTION			
18	03/10/2003	NON-FINAL REJECTION			
17	01/03/2003	DATE FORWARDED TO EXAMINER			
16	12/23/2002	RESPONSE TO ELECTION / RESTRICTION FILED			
15	12/04/2002	MAIL RESTRICTION REQUIREMENT			
14	12/03/2002	REQUIREMENT FOR RESTRICTION / ELECTION			
13	08/20/2002	CASE DOCKETED TO EXAMINER IN GAU			
12	06/12/2002	PRELIMINARY AMENDMENT			
11.7	04/15/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	04/15/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	04/25/2002	APPLICATION DISPATCHED FROM OIPE			
9	04/24/2002	APPLICATION IS NOW COMPLETE			
8	04/08/2002	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
7	04/08/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
6	02/06/2002	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
5	01/24/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			

4	01/23/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
3	01/16/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	10/23/2001	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	10/23/2001	INITIAL EXAM TEAM NN			

**Search Another: Application#**

Search

### EXPLANATION OF PTA CALCULATION

### EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to [OASIS](#) | Home page